

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6523

PETITION OF LUGUENS ETIENNE

OPINION OF THE BOARD
(Public Hearing Date: July 12, 2017)
(Effective Date of Opinion: July 21, 2017)

Case No. A-6523 is an application by Luguens Etienne for a five (5) foot variance to allow an existing structure, a room addition, to remain within two (2) feet of the side lot line. The required setback is seven (7) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on July 12, 2017. Luguens Etienne appeared in support of the application with Ziyad Shalabi, his engineer.

Decision of the Board: Variance **Granted**.

EVIDENCE PRESENTED

1. The subject property is Lot 16, Block 15A, Edelman's Add Subdivision located at 6603 Poplar Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone.
2. The requested variance is for a one-story rear addition that is located on the north side of this home, and that encroaches into the side lot line setback on the east side of this property.
3. The subject property is an unusually shaped, non-rectilinear, five-sided lot. The side lot line on the east side of this property is comprised of two distinct segments which join at an obtuse angle. The first segment runs roughly parallel to the side lot line on the west side of the property, and extends from the street to the rear of the original home. The second segment, which begins at the rear of the home and extends to the rear lot line, is angled in towards the western side lot line, causing the rear yard to narrow appreciably from south to north. The rear lot line is not parallel to the front lot line, and

joins the second segment of the east side lot line at an obtuse angle similar to that formed by the two east side lot line segments, such that the property comes to a point in the rear. In addition, the topographical lines illustrate that the rear yard is encumbered by a significant uphill slope, rising nearly 13 feet from the rear of the home to the rear of the property. See Exhibit 4(a). The testimony of both Mr. Etienne and Mr. Shalabi at the hearing confirmed the unique shape and slope of the subject property.

4. The Zoning Vicinity Map reveals that the shape of this property is indeed unique, and that most of the lots in this neighborhood are rectangular. See Exhibit 8(b).

5. The Statement of Justification indicates that Mr. Etienne had received a building permit for an addition that was slightly offset from the rear of the original home, but that because of the narrowing and sloped nature of the rear yard, his contractor made a field adjustment during construction which moved the addition to the east, aligning it with the eastern side of the original home and, because of the bend that the east side lot line takes at that point, encroaching into the setback. See Exhibit 3.

6. The record contains several letters of support for this variance, including a letter from the neighbor most affected at 6601 Poplar Avenue. See Exhibit 7. Mr. Shalabi confirmed this in his testimony.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59.7.3.2.E.2.a.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds that the subject property has a unique, five-sided, non-rectilinear shape that causes the lot to narrow from the front to the rear, particularly behind the original home, such that it comes to a point. The zoning vicinity map illustrates that this unusual shape is unique in the neighborhood, unlike any of the surrounding properties. See Exhibit 8(b). In addition, the Board further finds that the rear of this property is encumbered by an uphill slope. See Exhibit 4(a).

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

There is no evidence to suggest that Mr. Etienne created the unusual shape or topography of his property, and thus the Board finds that he did not.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the angled east side property line and topography of this lot combine to create a constrained buildable area behind this home, creating a practical difficulty for the Petitioner in locating his addition. The Board finds that the requested variance of five feet, necessary to allow a modest one-story rear addition which is coplanar with the existing home, is the minimum necessary to overcome this difficulty.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that the proposed addition is entirely consistent with the recommendation of the Takoma Park Master Plan to preserve "the existing residential character, encourage neighborhood reinvestment and enhance the quality of life throughout Takoma Park."

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

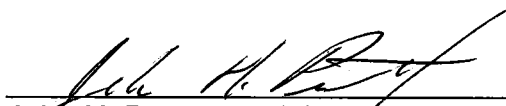
The Board finds that this one-story rear addition will not be adverse to the use and enjoyment of abutting or confronting properties, as evidenced by the letters of support in the record, which seem to welcome this addition as an improvement to the neighborhood.

Accordingly, the requested variance to allow an existing addition within five feet of the side lot line is **granted**, subject to the following condition:

1. Petitioner shall be bound by his testimony, the testimony of his engineer and exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion.

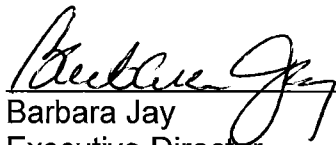
Therefore, based upon the foregoing, on a motion by John H. Pentecost, Vice Chair, seconded by Stanley B. Boyd, with Edwin S. Rosado and Bruce Goldensohn in agreement, and with Carolyn J. Shawaker, Chair, necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost, Vice Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 21st day of July, 2017.


Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.